



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON MODIFYING THE CALCULATION OF BROADBAND BENCHMARKS

WC Docket No. 10-90

Comment Date: June 8, 2023

Reply Comment Date: June 23, 2023

In this Public Notice, the Wireline Competition Bureau (WCB or Bureau), in coordination with the Office of Economics and Analytics, seeks comment on modifying the calculation of our broadband reasonable comparability benchmarks for the Urban Rate Survey (URS or Survey). In particular, the Bureau seeks comment on methods for calculating benchmarks for a wider spectrum of service speeds as well as other proposed improvements.

Background. In the *USF/ICC Transformation Order*, the Commission delegated to the Wireline Competition Bureau and the Wireless Telecommunications Bureau (collectively, Bureaus) “authority to conduct an annual survey of urban broadband rates, if necessary, in order to derive a national range of rates for broadband service...”¹ This national range would be used to ensure that Universal Service Fund (USF) recipients offer voice and broadband services at reasonably comparable rates to those in urban areas.²

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17708, para. 114 (2011) (*USF/ICC Transformation Order*).

² Through its Universal Service policies, the Commission is required to recognize that “[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 113. Likewise, recipients of high-cost support that are subject to broadband performance obligations are required to offer broadband service at rates that are at or below the relevant reasonable comparability benchmark. *USF/ICC Transformation Order*, 26 FCC Rcd at 17695, para. 86. Moreover, “support recipients must certify that the pricing of the broadband offering they are relying upon to meet their broadband performance obligation is no more than the applicable benchmark as specified in a public notice annually issued by the Wireline Competition Bureau” *Connect America Fund; ETC Annual Reports and Certifications; Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*; WC Docket Nos. 10-90, 14-58, 14-192, Report and Order, 29 FCC Rcd 15645, 15686-87, para. 120 (2014).

The Bureau released the *2013 URS Order* in April 2013 that adopted the form and content of the URS for fixed voice and fixed broadband residential services.³ With regard to fixed broadband services, the *2013 URS Order* required that providers report all residential, non-discounted monthly rates for all standalone service speeds above 200 kbps offered in specified census tracts.⁴ The *Order* limited the survey to “all fixed terrestrial providers,” which does not include satellite providers.⁵ The URS has collected this information annually since the initial URS was established in 2014, and the Bureau calculates and announces reasonable comparability benchmarks for voice and broadband services annually.⁶

Discussion. We seek comment on whether we should change how we calculate our broadband benchmarks using data collected through the URS. Unlike monthly fixed voice service rates, which are typically one rate for unlimited monthly service, broadband rates vary by broadband service characteristics, including download and upload speeds and usage allowance.⁷ The Bureau adopted the use of a weighted linear regression analysis to estimate the mean rate for a specific set of service characteristics plus the addition of two standard deviations to this mean to determine the benchmark.⁸ We seek comment on whether limiting ourselves to the use of weighted least squares regression may be hindering our ability to optimally set benchmarks. We seek comment on the use of additional non-linear statistical techniques for this analysis and whether other methodologies could provide more useful benchmarks.

When the Bureau adopted the weighted linear regression methodology, it did so for speeds ranging from 4 Mbps to 40 Mbps, and considered linear regression analysis sufficient to set benchmarks for that limited speed range. However, today, we must create benchmarks for a wider spectrum of service speeds ranging from 4 Mbps to gigabit speeds, while using a limited set of surveyed respondents. We seek comment on the range of speeds for which we should set broadband benchmarks. Currently, we set benchmarks for download speeds from 4 Mbps to 1 Gbps, as that is the highest speed currently required

³ *Connect America Fund*, WC Docket No. 10-90, Order, DA 13-598, 28 FCC Rcd 4242, para. 1 (2013) (*2013 URS Order*).

⁴ *2013 URS Order*, 28 FCC Rcd at 4248, para. 20.

⁵ *Id.* at 4244, para. 9.

⁶ The Commission initially limited rural carriers’ universal service support depending on whose rates were below a set minimum rate known as the “rate floor.” *USF/ICC Transformation Order*, 26 FCC Rcd at 17749-56, paras. 234-47. If a carrier charged its customers less than the rate floor amount for voice service, the difference between the amount charged and the rate floor was deducted from the carrier’s USF support. *Id.* at 240-41. However, the Commission eliminated the rate floor in 2019, finding that its purpose was fulfilled, and its need was no longer justified. *Connect America Fund*, WC Docket No. 10-90, *Report and Order*, 33 FCC Rcd at 2621, 2623, para. 9 (2019).

⁷ *Connect America Fund*, WC Docket No. 10-90, *Report and Order*, 29 FCC 13485, para. 1 (2014).

⁸ *Connect America Fund*, WC Docket No. 10-90, *Report and Order*, 29 FCC 13485, 13487, para. 7 (2014). The methodology for adopting benchmarks in this Report and Order applies to all states, with the exception of Alaska. *Id.* at para. 12. Because of the higher costs of building infrastructure in Alaska, the Commission directed the Bureau to determine an Alaska-specific reasonable comparability benchmark for service. *See Connect America Fund; Universal Service Reform; Connect America Fund – Alaska Plan*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10149, para. 28 (2016), and *Connect America Fund*, Order, 31 FCC Rcd 12086, 12092, para. 21 (2016). Thus, the Bureau adopted reasonable comparability voice and broadband benchmarks separately for Alaska Plan rate-of-return carriers and Alaska Communications Systems. *Wireline Competition Bureau Announces Voice and Broadband Reasonable Comparability Benchmarks for Alaska Plan Rate-of-Return Carriers and Alaska Communications Systems and Confirms Minimum Usage Allowance Requirements*, 32 FCC Rcd 3003 (2017).

by our high-cost programs. We also seek comment on when we will likely need benchmarks for higher speeds as these products become commercially available.⁹

In addition to an increasing range of speeds, in the last few years the Bureau has also noted that Survey data show that some variables, such as upload speed and capacity allowances, have become less relevant to setting benchmark rates. For example, in some cases, we have found that inclusion of upload speed in rate calculations can result in anomalies where the benchmark rate rises as upload speed falls, likely because download speed is more significant to price levels. In addition, in some instances we have found that capacity allowances have little to no effect on the benchmark rate. We seek comment on whether we should have the flexibility to exclude these variables when their inclusion has only a small or insignificant effect on the benchmarks.

Additional URS Issues. Data for the URS are collected from providers at the census tract level, with some carriers providing data with multiple distinct service areas and varying prices within a census tract. Currently, carriers are only required to report all non-discounted rates within a census tract for voice and broadband monthly services.¹⁰ However, there has been confusion among carriers, leading some to provide all pricing within a census tract, including discounted prices. When carriers report all prices for distinct service areas in a census tract, the information does not enable us to determine the statistical weight to give to each of the reported prices. We thus seek comment on requiring providers to report only the non-discounted rates that have the most subscribers for each standalone service speed in the distinct area within a census tract. This approach would have several benefits, including reducing filer confusion, enhancing the quality of data submitted, and alleviating the existing burden on the carriers when completing the survey.

We also seek comment on a new definition of an urban tract for the purpose of the URS. The term “urban” was defined in 2013 as “all 2010 Census urban areas and urban clusters that sit within an [Metropolitan Statistical Areas] (MSA).”¹¹ First, we propose to update the urban definition to rely on the census tracts associated with the 2020 Census. Second, we seek comment on whether to modify the definition to ensure that tracts deemed urban consist primarily of urban territory. Census defines urban at the census block level, and the existing URS definition of an urban tract has the effect of designating as urban census tracts that are largely or even entirely comprised of rural census blocks. To ensure that urban tracts are as urban as possible, we propose to define urban census tracts as those in which at least 80% of housing units are within a Census Urban Area with a population of 50,000 or more. This is consistent with the definition used for the 2023 URS.¹² The 80% threshold for urban housing units maximizes the number of urban households in urban tracts while minimizing the number of urban

⁹ As noted above, the Bureau began using 500 surveys for carriers to report their non-discounted prices within urban census tracts and has the authority to collect up to 2,000 surveys. Going forward, we will evaluate whether our sample size of up to 2,000 is sufficient to ensure the quality and reliability of our data analysis.

¹⁰ *2013 URS Order*, 28 FCC Rcd at 4248, para. 20.

¹¹ *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 4242, para. 10 (2013). Urbanized Areas and Urban Clusters are the two types. The 2010 Census included two types of urban areas (referred to, together, as a Census Urban Area). Urbanized Areas are those of 50,000 or more people; Urban Clusters of at least 2,500 and less than 50,000 people. Metropolitan Statistical Areas (MSAs) are defined by the U.S. Office of Management and Budget and are associated with at least one Urban Area that has a population of at least 50,000. The MSA comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

¹² See *Urban Rate Survey Timeline for 2023*, WC Docket No. 10-90, Public Notice, DA 22-859, at n.2 (OEA/WCB Aug. 15, 2022).

households that are not in an urban tract.¹³ Similarly, the 50,000 population threshold ensures that only truly urban areas are included.

In addition, in URS responses, some large broadband providers report uniform nationwide undiscounted pricing (i.e., offering the same recurring monthly charge for a given speed tier service) nationwide. To optimize the number of diverse URS responses while minimizing the burden on respondents, we propose to identify such providers and reduce the number of surveys assigned to them.¹⁴ We seek comment on how to identify providers with nationwide pricing. Should we identify those that may have nationwide pricing for undiscounted services solely from the previous year's survey? If so, how many surveys should we collect from providers appearing to have nationwide pricing so that we can properly identify such providers for the next survey? When determining the number of samples to give these providers, how should we account for other charges, such as "total of state, local, and municipal taxes" that may vary by state?

Similarly, some voice providers report offering nationwide undiscounted pricing. Even if a provider's monthly recurring charge for undiscounted voice services is the same nationwide, there are likely other associated charges that vary by state, such as the access recovery charges for incumbent local exchange carriers; mandatory extended area service (EAS) charges; and state subscriber line charges. If we sample based on nationwide pricing, how should we account for the associated charges that may vary by state?

Comment Filing Requirements

Interested parties may file **comments on or before June 8, 2023** and **replies on or before June 23, 2023**. All pleadings must reference **WC Docket No. 10-90**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.¹⁵

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹⁶

¹³ Based on 2010 census data. The Census Bureau identifies each 2020 census block as being either urban or not urban. All households in an urban block are considered urban, and all households in a non-urban block are non-urban. The 80% threshold maximized the following: the number of urban households in census tracts minus the number of urban households in nonurban tracts.

¹⁴ Weighting would be used to ensure proper representation in the sample.

¹⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998); 63 FR 24121 (1998).

¹⁶ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

Additional Copies. Parties should send a copy of their filings to Suzanne Yelen, Wireline Competition Bureau, by e-mail to Suzanne.Yelen@fcc.gov.

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Permit but Disclose Ex Parte Communications. For the purposes of the Commission's *ex parte* rules, each petition submitted pursuant to section 214(e)(6) will be treated as initiating a permit-but-disclose proceeding under the Commission's rules.¹⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).¹⁸ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation.¹⁹ If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.²⁰ Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).²¹ In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf).²² Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For additional information on this proceeding, please contact Suzanne Yelen (Suzanne.Yelen@fcc.gov) of the Wireline Competition Bureau at (202) 418-0626 or Craig Stroup (Craig.Stroup@fcc.gov) of the Office of Economics and Analytics at (202) 418-0989.

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¹⁷ See 47 CFR § 1.1206.

¹⁸ *Id.* § 1.2016(b)(2)(iii).

¹⁹ *Id.* § 1.1206(b)(1).

²⁰ *Id.*

²¹ *Id.* § 1.1206(b)(2).

²² *Id.* § 1.1206(b)(2)(i); see also *id.* § 1.49(f).